

(f) If:

(1) On the business day prior to the business day on which the futures commission merchant fails to meet a margin call with respect to a Cleared Swaps Customer Account, the derivatives clearing organization referenced in paragraph (c) of this section held, with respect to such account, Cleared Swaps Collateral of a value no less than the amount specified in § 22.12(c)(2) of this part, after the application of haircuts specified by the rules and procedures of such derivatives clearing organization, and

(2) As of the close of business on the business day on which the margin call is not met, the market value of the Cleared Swaps Collateral held by the derivatives clearing organization is, due to changes in such market value, less than the amount specified in § 22.12(c)(2) of this part, then the amount of collateral attributable to each Cleared Swaps Customer pursuant to § 22.12(c)(1) of this part shall be reduced by the percentage difference between the amount specified in § 22.12(c)(2) and such market value.

(g) A derivatives clearing organization or Collecting Futures Commission Merchant is entitled to reasonably rely upon any information provided by a defaulting futures commission merchant under § 22.14. If the defaulting futures commission merchant does not provide such information on the date of the futures commission merchant's default, a derivatives clearing organization or Collecting Futures Commission Merchant may rely on the information previously provided to it by the defaulting futures commission merchant.

§ 22.15 Treatment of Cleared Swaps Customer Collateral on an individual basis.

Subject to § 22.3(d) of this part, each derivatives clearing organization and each Collecting Futures Commission Merchant receiving Cleared Swaps Customer Collateral from a futures commission merchant shall treat the value of collateral required with respect to the portfolio of rights and obligations arising out of the Cleared Swaps intermediated for each Cleared Swaps Customer, and collected from the futures commission merchant, as belonging to

such customer, and such amount shall not be used to margin, guarantee, or secure the Cleared Swaps or other obligations of the futures commission merchant or of any other Cleared Swaps Customer or Customer. Nothing contained herein shall be construed to limit, in any way, the right of a derivatives clearing organization or Collecting Futures Commission Merchant to liquidate any or all positions in a Cleared Swaps Customer Account in the event of default of a clearing member or Depositing Futures Commission Merchant.

§ 22.16 Disclosures to customers.

(a) A futures commission merchant shall disclose, to each of its Cleared Swaps Customers, the governing provisions, as described in paragraph (c) of this section, relating to use of Cleared Swaps Customer Collateral, transfer, neutralization of the risks, or liquidation of Cleared Swaps in the event of a default by the futures commission merchant relating to the Cleared Swaps Customer Account, as well as any change in such governing provisions.

(b) If the futures commission merchant referenced in paragraph (a) of this section is a Depositing Futures Commission Merchant, then such futures commission merchant shall disclose, to each of its Cleared Swaps Customers, the governing provisions, as described in paragraph (c) of this section, relating to use of Cleared Swaps Customer Collateral, transfer, neutralization of the risks, or liquidation of Cleared Swaps in the event of a default by:

(1) Such futures commission merchant or

(2) Any relevant Collecting Futures Commission Merchant relating to the Cleared Swaps Customer Account, as well as any change in such governing provisions.

(c) The governing provisions referred to in paragraphs (a) and (b) of this section are the rules of each derivatives clearing organization, or the provisions of the customer agreement between the Collecting Futures Commission Merchant and the Depositing Futures Commission Merchant, on or through which the Depositing Futures Commission Merchant will intermediate Cleared

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Swaps for such Cleared Swaps Customer.

Pub. L. No. 111–203, 124 Stat. 1376 (Jul. 21, 2010).

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**PART 23—SWAP DEALERS AND
MAJOR SWAP PARTICIPANTS**

Subpart A [Reserved]

Subpart A [Reserved]

Sec.

23.1–23.20 [Reserved]

§§ 23.1–23.20 [Reserved]

Subpart B—Registration

Subpart B—Registration

23.21 Registration of swap dealers and major swap participants.

§ 23.21 Registration of swap dealers and major swap participants.

23.22 Associated persons of swap dealers and major swap participants.

(a) Each person who comes within the definition of the term “swap dealer” in section 1a(49) of the Act, as such term may be further defined by the Commission, is subject to the registration provisions under the Act and to part 3 of this chapter.

23.23–23.40 [Reserved]

(b) Each person who comes within the definition of the term “major swap participant” in section 1a(33) of the Act, as such term may be further defined by the Commission, is subject to the registration provisions under the Act and to part 3 of this chapter.

Subpart H—Business Conduct Standards for Swap Dealers and Major Swap Participants Dealing With Counterparties, Including Special Entities

(c) Each affiliate of an insured depository institution described in section 716(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203 section 716(c), 124 Stat. 1376 (2010)) is required to be registered as a swap dealer if the affiliate is a swap dealer or as a major swap participant if the affiliate is a major swap participant.

23.400 Scope.

23.401 Definitions.

23.402 General provisions.

23.403–23.409 [Reserved]

23.410 Prohibition on fraud, manipulation and other abusive practices.

23.411–23.429 [Reserved]

23.430 Verification of counterparty eligibility.

23.431 Disclosures of material information.

23.432 Clearing disclosures.

23.433 Communications—fair dealing.

23.434 Recommendations to counterparties—institutional suitability.

23.435–23.439 [Reserved]

23.440 Requirements for swap dealers acting as advisors to Special Entities.

23.441–23.449 [Reserved]

23.450 Requirements for swap dealers and major swap participants acting as counterparties to Special Entities.

23.451 Political contributions by certain swap dealers.

§ 23.22 Associated persons of swap dealers and major swap participants.

(a) *Definition.* For the purpose of this section, the term “person” means an “associated person of a swap dealer or major swap participant” as defined in section 1a(4) of the Act and § 1.3(aa)(6).

APPENDIX A—GUIDANCE ON THE APPLICATION OF §§ 23.434 AND 23.440 FOR SWAP DEALERS THAT MAKE RECOMMENDATIONS TO COUNTERPARTIES OR SPECIAL ENTITIES

AUTHORITY: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6p, 6s, 9, 9a, 13b, 13c, 16a, 18, 19, 21 as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (July 21, 2010).

EFFECTIVE DATE NOTE: At 77 FR 9822, Feb. 17, 2012, the authority citation for part 23 was revised, effective Apr. 17, 2012. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6p, 6s, 9, 9a, 12a, 13b, 13c, 16a, 18, 19, 21 as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act,

(b) *Fitness.* No swap dealer or major swap participant may permit a person who is subject to a statutory disqualification under section 8a(2) or 8a(3) of the Act to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knows, or in the exercise of reasonable care should know, of the statutory disqualification; *Provided, however,* that the prohibition set forth in this paragraph (b) shall not apply to any person